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and Immigration  
Services

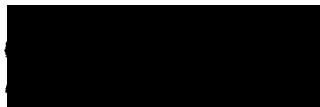
Admission is denied to  
prevent clearly unwarranted  
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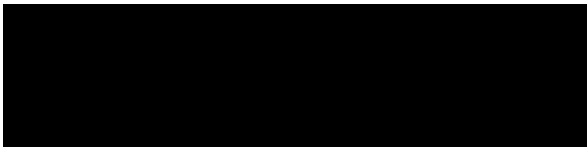
FILE: WAC 03 005 50214 Office: CALIFORNIA SERVICE CENTER Date: APR 20 2005

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to  
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



TRIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Maig Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center. The petitioner filed a motion to reopen and reconsider. The director dismissed the motion, finding only that it did not meet the requirements of a motion to reopen. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences, specifically as a researcher and physicist working on composite materials. Evidence submitted with the petition includes documentation of awards, patents, publications, employment, and three recommendation letters. In response to a request for evidence, the petitioner submitted additional articles, citation information, recommendation letters, documentation of patents, and other materials. The director denied the petition in a decision that contains several notable errors. For example, on page two of his decision the director states that the "[p]etitioner indicates her job title to be that of Biochemist specializing in Molecular Biology and Biochemistry research." The petitioner in this case is a male researcher and physicist. Other errors are discussed below in the body of our decision.

Petitioner's present counsel filed a motion to reopen and reconsider with an eight page brief, an additional recommendation letter and another copy of and additional documents relating to an electronic mail message to the petitioner from the editor of the journal *Advanced Materials*. The director classified the motion solely as a motion to reopen and explained the reasons for denial in one sentence: "The motion to reopen does not state new facts and is not supported by affidavits of other documentary evidence." The matter is now before us on appeal and we examine the merits of the original petition pursuant to 8 C.F.R. § 103.5(b)(6). Although we find significant flaws with the director's original decision, we uphold his ultimate determination that the petitioner did not establish the sustained national or international acclaim requisite to classification as an alien with extraordinary ability. The evidence submitted, counsel's contentions and the director's decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

*(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner submitted evidence that he received the Hershel Rich Technion Innovation Award in Israel and that he accepted the 1999 BIRD Project of the Year Award on behalf of his former company, PolyEitan Composites, Ltd. (PolyEitan). The petitioner also claims to have won four additional awards in Israel and Russia. In counsel's September 9, 2003 cover letter, he lists these awards and then states: "Latest [a]wards from [REDACTED] petitioner received for R&D of novel super composites for Russian space rockets." The record contains four documents apparently related to these awards, but they do not corroborate counsel's claim. Three of the documents appear to be written in Hebrew, but are accompanied by incomplete and uncertified translations. The Russian document is untranslated. Without complete and certified translations, we cannot determine whether these documents support the petitioner's claim. See 8 C.F.R. § 103.2(b)(3). Accordingly, this evidence is not probative and will not be given any weight in this decision.

The director found insufficient evidence to establish that the petitioner's receipt of the Hershel Rich Technion award satisfied this criterion. We agree. A printout from the Technion's website submitted with the petition explains that the award is "presented to researchers for outstanding innovative projects with commercial potential. The award was established ... to encourage competition and discovery at the Technion. Any student, faculty member or employee may compete." The award is thus open only to individuals associated with the Technion – Israel Institute of Technology. An award or prize thus limited to one educational institution is neither national nor international in scope. Consequently, the petitioner's receipt of this award does not meet this criterion.

The director did not fully discuss the petitioner's association with the BIRD Project of the Year Award, an honor that merits further examination. The evidence submitted establishes that this award is granted by the U.S.-Israel Binational Industrial Research and Development (BIRD) Foundation. According to a printout from its website, the BIRD Foundation "was established by the U.S. and Israeli governments in 1977 to generate mutually beneficial cooperation between the private sectors of the U.S. and Israeli high tech industries." Funding is open to any qualified pair of companies, one Israeli and one from the United States. The petitioner was general manager of PolyEitan when the company jointly received a grant from the BIRD Foundation with AlliedSignal, Incorporated, a U.S. company. In 1999 the two companies received the BIRD Project of the Year Award for their development of a new composite material, 3DPE. The petitioner submitted a January 18, 2000 press release from the website of the American Society for Technion – Israel Institute of Technology that states that the "product was developed initially in 1996 by PolyEitan founder [REDACTED]"

and [REDACTED] Research Fellows in the Department of Chemical Engineering at the Technion.” The project was selected among six others supported by the BIRD Foundation in the preceding two years and was chosen for its “technological breakthrough and its great economic potential.”

The record establishes that the petitioner helped develop 3DPE and was both the project manager and the general manager of PolyEitan over the course of the company’s BIRD foundation grant. The program entitled “The 1999 BIRD Project of the Year Awards Ceremony” lists the petitioner as technical director of PolyEitan and indicates that he accepted the award on the company’s behalf. Two letters from [REDACTED] current General Manager of PolyEitan (one dated May 19, 2003 and one dated December 10, 2003 that was submitted with the motion to reopen and reconsider) attest that “the crucial part” of the BIRD award “belonged” to the petitioner. [REDACTED] also verifies that the petitioner met with representatives of the Israeli and U.S. governments during their official visits to the company in 1999 and 2000 to explain the significance of the invented materials. The record establishes that the BIRD award is an internationally recognized prize for excellence in the petitioner’s field and that the award, although granted to a team, is attributable to the petitioner due to his crucial role in the development and management of the project. Accordingly, the petitioner’s receipt of this award meets this criterion.

*(ii) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

Under this category, the director erroneously stated that “[t]he petitioner provided a list of associations for which he was a member beginning in 1993 to the present time.” He then found insufficient evidence to meet this criterion. As counsel rightly notes, the petitioner never claimed eligibility under this criterion and the record contains no evidence of his memberships in any associations.

*(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The director correctly concluded that the petitioner did not meet this criterion. The petitioner submitted nine media articles and printouts of the results of two internet searches under the petitioner’s last name conducted by Yahoo and Google. The printouts do not constitute evidence under this criterion. The lists show only that the petitioner’s name (like billions of others) appears on the internet. The record contains no proof that any of the search results are actually linked to published material about the petitioner.

The media articles also do not meet this criterion. Two articles are from Israeli newspapers and are apparently printed in Hebrew. The articles are accompanied by cursory and uncertified translations. Without complete and certified translations, we cannot determine whether these documents support the petitioner’s claim. See 8 C.F.R. § 103.2(b)(3). Of the remaining articles, six discuss the new composite material developed by the petitioner’s former company, PolyEitan, and its receipt of the 1999 BIRD award. One article is a press release of the American Society for Technion that is quoted above under the first criterion. Two other articles reproduce this press release verbatim. Another “article” is actually a two-sentence description with a purported link to a full article. The petitioner is mentioned only in the press release and its two reprints as a research fellow who was part of the team that originally developed the composite material. The other articles do not even

mention the petitioner. In addition, the record contains no circulation or other information about the sources of the articles that would indicate that they are professional, major trade publications or other major media.

The final article is from the *Los Angeles Times* and is entitled "Foam Issue May Delay Resumption of Shuttle Flights." This article mentions that engineers at the University of Southern California's Composites Center (the petitioner's current employer) are "sending NASA a proposal this week on using a fiber-reinforced foam that the university's Composite Center has developed." The article quotes the petitioner's supervisor, but does not mention the petitioner himself. In sum, the articles discuss projects that the petitioner has worked on, but do not focus on him or significantly identify him in such a way that they may be considered to be about him or his work as required by the regulation. Accordingly, the petitioner does not meet this criterion.

*(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

Although the director's analysis of this category was flawed, we affirm his determination that the petitioner does not meet this criterion. The petitioner submitted one letter, one electronic mail message, and two undated documents asking the petitioner to review articles for four scientific journals. The director stated that there was no evidence that the articles were in the petitioner's or an allied field and that the evidence was insufficient to "establish the authors [sic] professional status." This statement suggests that the director did not fully review the evidence submitted. The record contains documentation that all of the journals publish articles about scientific research in the petitioner's field and that three of the journals are peer-reviewed. However, the record does not establish the petitioner's eligibility under this criterion because there is no evidence that the petitioner actually conducted the requested reviews.

We note that counsel misleadingly characterizes one of the review requests. On page six of his motion, counsel asserts that the petitioner "was asked by a Nobel Prize winner to review his work to be published." He repeats this claim on page two of his cover letter accompanying the Form I-290B: "a Nobel Prize winning Scientist [redacted] request[ed] [redacted] to review a publication in which he was drafting." The evidence does not support that assertion. The record contains an electronic mail message to the petitioner from [redacted] editor of the journal *Advanced Materials* asking the petitioner to review an article of which [redacted] is a co-author (along with six other individuals). There is no evidence that [redacted] himself directly contacted the petitioner and as stated above, there is also no evidence of the petitioner's actual review of this article.

The petitioner also submitted an electronic mail message inviting him to co-chair the "Advanced Materials Track at WESTEC 2004 Conference." Even if this position included judging the work of others in his field, it cannot establish the petitioner's eligibility because the conference is scheduled for 2004, at least two years after his petition was filed. The petitioner must establish his eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). There is also no evidence that the petitioner actually accepted the invitation to act as a co-chair at this conference.

*(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

Evidence submitted that is relevant to this category includes recommendation letters, documentation of seven patents and three patent applications, publications and abstracts, lists of research grants, an invitation to write a book, and materials concerning the petitioner's work at PolyEitan and the previously discussed BIRD award.

The director failed to fully review the record and mistakenly stated that the petitioner had only submitted evidence of patent applications. We discuss the evidence in full.

The petitioner submitted ten recommendation letters from scientists working in his field or related specialties. Four of the authors have worked directly with the petitioner: [REDACTED] is the petitioner's current supervisor at the Composites Center at the University of Southern California; [REDACTED] the Russian Academy of Sciences was on the petitioner's dissertation review committee; [REDACTED] collaborated with the petitioner when [REDACTED] was working at the Nokia Research Center in Helsinki; and [REDACTED] was a fellow postdoctoral researcher of the petitioner's at the Composites Center. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the few scientists with whom he has worked directly. Moreover, recommendation letters solicited by an alien for his petition carry less weight than preexisting, independent evidence of major contributions that one would expect of a scientist with sustained national or international acclaim.

In this case, the petitioner submits five letters from scientists who apparently have never worked with him directly. As opinions from independent experts in the petitioner's field or related specialties, these letters merit further discussion. [REDACTED] principal investigator at the Los Alamos National Laboratory, states that the petitioner was the first in the world to discover that "the effect of self-bonding fibers allows reducing dramatically [the] weight of matrix and hence the weight of composite materials that has extraordinary significance for all aspects of aerospace industry." [REDACTED] then explains that the petitioner "invented and developed fracture resistant foam material" and that this research was published in scientific journals and mentioned in the Los Angeles Times article (previously discussed under the third criterion). He concludes that the petitioner's work has "very serious potential for application in new generations of the energetic devices for aerospace, aircraft and naval systems ... [and] may have a serious significance for National Interests of United States of America" (capitalization in original).

[REDACTED] praise for the potential value of the petitioner's work is echoed by [REDACTED] staff physicist in the Materials Science Division of the Argonne National Laboratory. [REDACTED] states that the petitioner "recently invented advanced foam material from expandable polyvinylchloride (PVC) microspheres" that has a "dramatically improved performance" compared to similar materials being developed by other researchers. [REDACTED] then proclaims that the petitioner's work "is crucial to the development of amazing technology, which holds huge commercial market potential with major military, civil and National Security applications in electronics, strong and light structural elements, etc." The letter states that several corporations have "tested" the petitioner's composite materials, but it provides no examples of their actual use in commercial products or current research and development projects.

Alexander Golovin, Assistant Professor in the Department of Engineering Sciences and Applied Mathematics at Northwestern University, also heralds the petitioner as a "leading scientist in his area" who possesses "outstanding creative potential." However, Professor Golovin apparently has no direct knowledge of the impact of the petitioner's work. He states only that the petitioner's "inventions are widely used in many trends judging by Internet responses."

[REDACTED] of the Department of Materials Engineering at the Ben-Gurion University of the Negev in Israel provides similarly unsubstantiated praise for the petitioner. While [REDACTED] states

that the petitioner is an "outstanding scientist generally recognized at international level [sic]," he simply speculates that the petitioner's work "may be especially appreciated" in the automobile industry and "may considerably raise mechanical characteristics of existing non-reinforced plastics."

Finally, [REDACTED] states that the petitioner's work is "on the cutting edge of technical progress, and on the top in the field of polymer materials." However, [REDACTED] states only that the petitioner's inventions "may find applications for the aerospace, transportation, civil infrastructure, and electronics." He adds that DuPont is considering inviting the petitioner to conduct seminars and "discuss joint cooperation."

In sum, these letters explain the importance of the petitioner's research to potential – but not established – applications in various industries. A letter from [REDACTED] General Manager [REDACTED] 2003) states that the petitioner led joint projects with [REDACTED] Allied-Signal Inc., [REDACTED] of Defense [REDACTED] military organization. The patented materials at PolyEitan Composites Ltd. were developed, tested and sold by these deals." The record contains photocopies of the business cards of various individuals who were purportedly interested in the PolyEitan materials, but no further documentation that they actually pursued that interest. As previously discussed, the BIRD award was granted to PolyEitan for its joint development of 3DPE and the material's "technological breakthrough and its great economic potential." Although an honor, the BIRD award itself does not establish that the petitioner's work on 3DPE made a major contribution to his field. In fact, the only evidence of the actual industrial application of any PolyEitan material is a document from IAI ELTA Electronics Industries, Limited that states that their microstrip array antenna uses a "polyeitan composite."

The evidence is also insufficient to establish that the petitioner's recent work at the Composites Center satisfies this criterion. [REDACTED] the petitioner's supervisor) cites three examples of the petitioner's activities at the Center. First, the petitioner's work on composite foams led to a patent application and "attracted interest from major international corporations." Second, Professor Nutt was invited by NASA to submit a proposal for using a composite foam to insulate the space shuttle's cryotank and he explains that the "invitation results in large part from Lev's contributions in the structural foam group." [REDACTED] states that the petitioner's work "has helped secure a two-year Navy contract to develop composite foams for use on future Navy ships." [REDACTED] better explains that the petitioner has made valuable contributions to the research conducted at the Center, but it does not establish that the petitioner himself had made major contributions to his field at the time of filing. The Navy contract and publications of the petitioner's research at the Center arose at least one year after the petition was filed and consequently cannot be considered. The petitioner must establish his eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner's patents, while notable, are also insufficient to meet this criterion. To establish eligibility under this category by virtue of patents, a petitioner must not only show that his work has been granted a patent, but that the patented invention constitutes a scientific contribution of major significance in his field. As our office has repeatedly stated, the significance of the patented invention must be determined on a case-by-case basis. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n.7 (Comm. 1998). The record contains evidence of five U.S. patents, one United Kingdom patent, and one Israeli patent granted to the petitioner jointly with two of his colleagues from the Technion and PolyEitan. The petitioner also submitted evidence of a Russian patent, but the original document in Russian is accompanied by an incomplete and uncertified translation. Again, without complete and certified translations, we cannot determine whether this document supports the petitioner's claim. See 8 C.F.R. § 103.2(b)(3).

The record contains almost no evidence that the other seven patents were granted for work constituting a major contribution to the petitioner's field. As stated above, the only documentation of an actual industrial application of the patented work shows that one "polyeitan composite" has been used in one antenna produced by a single Israeli company. This evidence does not demonstrate that the "polyeitan composite" was a major contribution to the petitioner's field. The record contains no other evidence of the established significance or actual impact of the petitioner's other patented or patent-pending work.

Finally, the petitioner's abstracts, participation in various conferences, lists of research grants and invitation to write a book are all insufficient to establish his eligibility under this criterion. The petitioner submitted evidence of numerous abstracts of his research findings, documents concerning his participation in conferences and lists of research grants in which he was involved. These materials document that the petitioner is active in his field, but do not show that he has made original and major contributions. The petitioner also submitted an electronic mail message from the publishing editor of the [REDACTED] inviting him to write a book on materials science. The record contains no evidence that the petitioner accepted this invitation or that he was the only scientist (or one of a select few) so invited. Most importantly, the message is dated nearly one year after the petition was filed and does not establish the petitioner's eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

The significance of the petitioner's publications is discussed under the sixth criterion. As stated below, the petitioner's articles have not been widely cited and his publication record at the time of filing did not reflect sustained national or international acclaim.

While the evidence indicates that the petitioner has conducted valuable research in his field and has helped create novel composite materials, the record is insufficient to establish that his work constitutes original contributions of major significance to his field consistent with sustained national or international acclaim.

*(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The director correctly determined that the petitioner did not meet this criterion. The record contains evidence that the petitioner has published 13 articles in scientific journals in his field. Five of these articles were published after the petition was filed and cannot be considered. The petitioner must establish his eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49. Of the remaining eight articles, two were published in Russian and are accompanied by cursory and uncertified translations. Without complete and certified translations, we cannot determine whether these documents support the petitioner's claim. See 8 C.F.R. § 103.2(b)(3). The petitioner is the lead author of only one of the remaining six articles, "Retardation of Dissolution and Surface Modification of High-Modulus Poly(ethylene) Fiber by the Synergetic Action of Solvent and Stress," published in 1995 in the *Journal of Polymer Science Part B*. This article is the only one for which citation information is submitted. The citation list shows that the article has been cited only four times, including one self-citation by the petitioner. The petitioner also does not submit proof that the *Journal of Polymer Science Part B* publishes only peer-reviewed articles. In fact, the record contains evidence of peer-review for only three of the journals that had published the petitioner's articles at the time of filing.

Mere publication of scientific work is insufficient to satisfy this criterion. Frequent publication of research findings is inherent to success as an established scientist and does not necessarily indicate the sustained acclaim



requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent experts or other proof that the alien's publications have had a significant impact in his field. In this case, the petitioner submitted sufficient proof that he had published only six articles at the time of filing. The record indicates that only three of these articles were peer-reviewed. The petitioner is the lead author of only one article that was published seven years prior to filing and has been cited by only three independent research teams. This evidence is clearly insufficient to meet this criterion.

*(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The petitioner initially submitted documentation of his participation at various scientific conferences as evidence of his eligibility under this criterion. The director correctly stated that "[t]his criterion relates to aliens who claim extraordinary ability in the arts. Since the petitioner is a Researcher/Physicist, this criterion does not apply." On page five of the brief accompanying his motion to reopen and reconsider, counsel finds fault with the director's conclusion because "[n]o evidence in this criteria [sic] was submitted and it is hard to understand why this was included in the decision." Counsel neglects to review the petitioner's original submission. Prior counsel claimed the petitioner was eligible under this criterion on page five of the cover letter accompanying the petition and submitted numerous documents under a cover page entitled "Category #6 Evidence of Display [sic] of Exhibition." However, this evidence is relevant to the fifth criterion and was discussed above in relation to that category.

*(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

Although the director erroneously described the petitioner's title as "Research Engineer," he correctly concluded that the petitioner did not meet this criterion. In order to establish eligibility under this category, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a component of a distinguished organization, the petitioner must establish the reputation of that component independent of the organization as a whole.

On page six of the cover letter accompanying his response to the request for evidence, counsel claims that the petitioner meets this criterion because he "has worked in the following distinguished research organizations." He then lists the Russian Academy of Sciences, Technion – Israel Institute of Technology, the PolyEitan company, and the University of Southern California. The petitioner apparently received his doctorate from the Russian Academy of Sciences in 1991. The record is devoid of any evidence that would indicate that the petitioner played a leading or critical role for the Academy.

The record contains several documents relating to the petitioner's involvement with PolyEitan. The evidence shows that the petitioner led the development of 3DPE and was both the project manager and the general manager of PolyEitan over the course of the company's BIRD Foundation grant. The BIRD Foundation is funded by the U.S. and Israeli governments and the May 19, 2003 letter from Dmitry M. Rein, current General Manager of PolyEitan states that the petitioner met with representatives of the Israeli and U.S. governments during their official visits to the company in 1999 and 2000. The subsequent letter of Mr. Rein submitted with the motion to reopen and reconsider states that the petitioner made "crucial" contributions to the patents and publications of work conducted at PolyEitan while the petitioner was employed by the company from 1996 to 2000. He also affirms that "the crucial part" of the BIRD award "belonged" to the petitioner. While this

evidence indicates that the petitioner performed in a leading and critical role for PolyEitan, the record is insufficient to establish that PolyEitan has a distinguished reputation independent of the general acclaim enjoyed by the Technion with which it is affiliated.

The petitioner's own involvement with the Technion is also insufficient to meet this criterion. The petitioner's curriculum vitae states that he was a postdoctoral fellow in the Department of Chemical Engineering at the Technion from 1992 to 1995 and that he continued working in the Department as a research fellow until 2000. Concurrently, from 1996 to 2000, the petitioner worked for PolyEitan, which is apparently housed and directly associated with the Technion. In 1996, the petitioner received the [REDACTED] Innovation Award and in 1999 PolyEitan jointly received the previously discussed BIRD award. While this evidence establishes the petitioner's successful employment and research at the Technion, it does not demonstrate that he played a leading or critical role for the Department of Chemical Engineering or the Technion as a whole.

Similarly insufficient is the evidence regarding the petitioner's present employment at the Composites Center at the University of Southern California. As discussed above in relation to the fifth criterion, the petitioner has been a valuable researcher at the Center. However, the petitioner's position is that of a postdoctoral fellow. Accordingly, all of the petitioner's work at the Center has been initiated and led by his supervisor, [REDACTED]. [REDACTED] states that the petitioner "has made important technological contributions that have drawn interest from large corporations." He adds that the Center "will be launching a start-up venture to commercialize some" of the technology on which the petitioner has worked and that "[i]f successful, the venture would result in a commercial material technology useful for advanced materials applications in diverse sectors of industry." [REDACTED] also claims that the petitioner's "presence has contributed substantially to the school's visibility in the field of lightweight materials," but offers no specific examples of those contributions. The petitioner thus appears to be a valued postdoctoral fellow, but has not yet assumed a leading or critical role at the Center. In addition, no independent evidence was submitted to establish the distinguished reputation of the Center independent of the University of Southern California.

*(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The director's decision referenced income reported for the petitioner on a prior Form I-140 (WAC 01 295 52655) filed by the University of Southern California as petitioner. As counsel rightly notes in his motion to reopen and reconsider, the petitioner submitted no evidence regarding his salary in this case and did not claim eligibility under this criterion.

The petitioner has met only one of the ten regulatory criteria. Counsel cites (on pages six and seven of his motion to reopen and reconsider) another decision in which this office purportedly "found that the petitioner only meet 2 out of 10 regulatory criterion. Nonetheless, it concluded that the support letters and documentation were sufficient independently of the 10 criterion regulations" (grammatical errors in original). That case is not before us and the facts may be significantly different from those in this case. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The decision counsel references is not a binding precedent. The significance of the recommendation letters and other evidence submitted in this case has been fully evaluated, discussed and found insufficient to establish the petitioner's eligibility.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence indicates that the petitioner is a skilled researcher who received one lesser internationally recognized award, but the record does not establish that he was an alien with extraordinary ability in the sciences at the time of filing. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.